



U.S. Department of Justice
Environment and Natural Resources Division

90-11-3-07683/17

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By ECF

February 8, 2023

The Honorable Madeline Cox Arleo, U.S.D.J.
U.S. District Court for the District of New Jersey
MLK, Jr., Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Re: *United States of America v. Alden Leeds, Inc., et al.*,
No. 22-cv-7326 (MCA) (LDW)

Dear Judge Arleo:

The United States submits this letter in lieu of a formal response to Occidental Chemical Corporation's ("OxyChem's") self-described Objection to Stipulation Regarding Motions to Intervene of Pharmacia LLC and Nokia of America Corporation ("Brief"). ECF No. 136. We respectfully ask the Court to disregard the Brief, which was improperly filed by a non-party that has not been authorized to intervene. Moreover, the Brief largely consists of arguments that are irrelevant to the Stipulation and Proposed Order, ECF Nos. 124 and 124-1, which would resolve Nokia and Pharmacia's motions on consent.

OxyChem filed its motion to intervene in this proceeding on December 23, 2022. ECF No. 34. The Court has not yet ruled on it. As a result, OxyChem is not authorized to file a brief in response to the Stipulation and Proposed Order without first seeking leave. As previously stated, the United States does not oppose OxyChem's motion to intervene, so long as reasonable limitations on the scope of intervention are imposed to prevent OxyChem from unduly enlarging and delaying this action. *See* ECF No. 84. While the United States is chiefly concerned that OxyChem may seek to derail this matter through burdensome discovery and evidentiary hearings, *id.*, the instant Brief demonstrates that OxyChem is also eager to inject itself into aspects of this action that have no bearing on the central question of whether the proposed Consent Decree is fair, reasonable, and in the interest of CERCLA. The Court should ignore OxyChem's Brief in order to ensure the just, speedy, and inexpensive determination of this action, Fed. R. Civ. P. 1, and to discourage OxyChem from filing irrelevant make-work briefs of this type moving forward.

As a non-party that has not been authorized to intervene, OxyChem could have sought leave to file its Brief as an amicus curiae. Had it done so, OxyChem would have had to show why its Brief is “desirable” and why the “matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(a)(3)(B) (emphasis added). But OxyChem’s Brief is neither desirable nor relevant; it primarily consists of irrelevant, recycled arguments about the allocation report for this matter.¹ Those arguments have no bearing on the procedural question of whether the Court should enter the Stipulation and Proposed Order that would expeditiously resolve, via consent, the motions to intervene filed by Nokia and Pharmacia.

For the foregoing reasons, the United States respectfully asks the Court to disregard OxyChem’s Brief and give it no weight.

Respectfully submitted,

TODD KIM
Assistant Attorney General

/s/ Andrew W. Keir
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¹ OxyChem sought and was granted extra pages for its Reply in Support of its Motion to Intervene. ECF No. 112. Based on the instant Brief, however, it appears OxyChem nevertheless felt constrained by the page limit for its Reply and availed itself of the opportunity to expound further in this “objection” to the Stipulation and Proposed Order. In addition, given that OxyChem’s Brief both cites to and responds to arguments made by the United States in its Sur-Reply Brief to OxyChem’s Motion to Intervene (ECF No. 119-1), OxyChem’s Brief is in effect an improperly filed sur-sur-reply, for which no consent was granted and no leave to file was sought.

U.S. Environmental Protection Agency, Region 2
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CERTIFICATE OF SERVICE

I certify that on February 8, 2023, I caused to be served the United States of America's foregoing letter by email upon counsel for each defendant, as listed in the table included in the Certificate of Service for the Notice of Lodging, ECF No. 2, in addition to service through ECF for all counsel of record.

/s/ Andrew W. Keir

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